

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

JOSEPH R. SLIGHTS, III
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET
Suite 10400
WILMINGTON, DE 19801
PHONE: (302) 255-0656

April 16, 2009

Vincent A. Bifferato, Jr., Esquire
Bifferato Gentilotti
Springside Plaza
100 Biddle Avenue, Suite 100
Newark, DE 19702

Gary H. Kaplan, Esquire
Marshall Dennehey Warner Coleman & Goggin
1220 N. Market Street, 5th Floor
P.O. Box 8888
Wilmington, DE 19899-8888

**Re: *Koach v. Capano Investments, et al.*
C.A. No. 07C-02-196-JRS**

Dear Counsel:

Defendants have moved for summary judgment. For the reasons stated below, the defendants' motion is granted in part and denied in part.

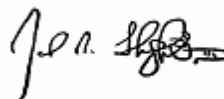
This case involves a slip and fall accident that occurred on February 28, 2005, as the plaintiff was exiting a building known as Brandywine Plaza II. The undisputed evidence reveals that the fall occurred at approximately 7:00 p.m. It had been snowing for most of the day and continued to snow at the time of the fall.

Defendants have moved for summary judgment on the ground that they were entitled to wait for the snow to stop falling before taking remedial measures to clear the snow that had accumulated.¹ The plaintiffs do not dispute this now well-settled principle of Delaware law. Accordingly, to the extent that plaintiffs' claim against the defendants arises from the defendants' alleged failure to clear snow from the sidewalks and paved areas surrounding Brandywine Plaza II prior to his fall, that claim is deficient as a matter of law. Defendants' motion for summary judgment is **GRANTED** with respect to this claim.

In their response to the motion for summary judgment, plaintiffs allege that their claim against the defendants actually arises from a defective gutter system which, during precipitation, would allow sheets of water to fall from the roof of the building on to the sidewalk below. In freezing temperatures, plaintiffs allege that the water would freeze on the sidewalk creating a dangerous condition. They further allege that the defendants were aware of this hazardous condition but did not correct it. According to the plaintiff, his fall occurred after he slipped on ice (not accumulated snow) that had formed on the sidewalk from water that was released from the defective gutter. With respect to this claim, after reviewing the motion in the light most favorable to the plaintiffs (as non-moving parties), the Court is satisfied that it is "desirable to inquire [more] thoroughly into [the facts] in order to clarify the application of the law to the circumstances."² To the extent the plaintiffs' claim is based on the alleged defect in the building's gutter system, therefore, the motion for summary judgment is **DENIED**.

IT IS SO ORDERED.

Very truly yours,



Joseph R. Slights, III

Original to Prothonotary

¹*Woods v. Prices Corner Shopping Center*, 541 A.2d 574 (Del. Super. 1988).

²*Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).